United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-2483

To be argued by
T. BARRY KINGHAM

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2483

UNITED STATES OF AMERICA,

Appellee,

—v.—

ALLEYNE F. ROBINSON, JOSE ANTONIO ACOSTA ALVAREZ, and JOSEPH M. VILLEGAS,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

PAUL J. CURRAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America

T. BARRY KINGHAM,
LAWRENCE S. FELD,
Assistant United States Attorneys, Of Counsel.

TABLE OF CONTENTS

TABLE OF CASES

PAGE

Statutes Cited

Other Authorities

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2483

UNITED STATES OF AMERICA,

Appellee,

—v.—

ALLEYNE F. ROBINSON, JOSE ANTONIO ACOSTA ALVAREZ, and JOSEPH M. VILLEGAS,

Defendants-Appellants.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Alleyne F. Robinson, Jose Antonio Acosta Alvarez and Joseph M. Villegas appeal from judgments of conviction entered on November 7, 1974 in the United States District Court for the Southern District of New York, after a two-week trial before the Honorable Dudley B. Bonsal, United States District Judge, and a jury.

Indictment 74 Cr. 459, filed on April 29, 1974, charged in Count One that between January 1, 1968 and March 6, 1970, Robinson, Alvarez and Villegas had conspired to violate Title 29, United States Code, Section 501(c), by agreeing to and actually converting to their own use and the use of others, property of the National Maritime Union, of which they were officials and employees, in violation of Title 18, United States Code, Section 371. In Counts Two through Eleven, the defendants were charged with conversion of union property in violation of Title 29, United

States Code, Section 501(c) at various times during the period May through September, 1969.

Prior to trial the District Court granted the Government's motion to dismiss Count Eleven as to all defendants, Counts Four through Ten as to the defendant Alvarez, and Counts Two, Three and Six through Ten as to the defendant Villegas. Accordingly, Robinson was tried for conspiracy and nine substantive counts (Counts One through Ten), Alvarez was tried for conspiracy and two substantive counts (Counts One, Two and Three), and Villegas was tried for conspiracy and two substantive counts (Counts One, Four and Five).

Trial began on September 10, 1974 and concluded on September 19, 1974, when the jury found the defendants guilty on all counts on which they were tried.

On November 7, 1974 Robinson received a one year suspended sentence and was placed on probation for one year on each of Counts One through Ten, to run concurrently, and fined $100.00 on each of the counts, with the total fine of $1,000.00 to be paid during the year of probation.

Alvarez and Villegas were each sentenced to probation for three months and a fine of $250.00 to be paid within the three months.

Statement of Facts

The Government's Case

The Government's proof at trial established that during the period from 1968 to 1970, defendant Alleyne Robinson, an officer of the National Maritime Union, in return for payments in excess of those authorized by the union, engaged in selling priority status in the union to unqualified seamen by obtaining certain union application forms, entering false information on these forms and then having them falsely verified, which resulted in the improper issuance of

certain highly desirable classification documents to the seamen. Defendants Alvarez and Villegas, who also were employees of the union, participated in the scheme by referring seamen to Robinson for the purpose of obtaining the false documents and also collected from the seamen unauthorized payments for Robinson. The evidence overwhelmingly demonstrated that the defendants flagrantly misused or aided and abetted in the misuse of union property, *i.e.*, the applications and classification documents, for their own personal financial gain.

1. Background.

During 1969, the National Maritime Union (hereafter "N.M.U."), was, as it is today, a labor organization representing unlicensed seamen (*e.g.*, deckhands, engineroom hands, stewards) on commercial and Government vessels under contract to the N.M.U. (Tr. 81, 86). Among the Government vessels whose civilian seamen were represented by the N.M.U. were those operated by the Military Sea Transportation Service (hereafter "M.S.T.S."). (Tr. 83).*

The membership of the N.M.U. in 1968-70 was divided into four numbered groups. Group 1 consisted of seamen who had achieved at least eight hundred days at sea on N.M.U. vessels within a five-year period.** Only these men were full-fledged members of the union, and only they could obtain permanent berths. (Tr. 92, 93, 103). Seamen in Groups 2 through 4 were entitled to compete for jobs on a seniority basis only after the eligible Group 1 seamen had been offered the opportunity for employment. (Tr. 103-106). Thus, Group 1 status, evidenced by a union book

---

* The M.S.T.S., an agency of the Navy Department, is now known as the Military Sealift Command. (Tr. 83).

** Service on ships not represented by the N.M.U. would not count in the computation. Thus, a seaman who had sailed on a ship represented by the rival Seafarer's International Union (SIU) could not use those sea days as credit toward Group 1 status. (Tr. 625).

and a blue card (other groups carried red cards and no union book), was highly desirable because it insured first opportunity for available and permanent employment.

In order to apply for Group 1 status, the seamen would complete certain forms. A seaman claiming experience aboard commercial ships would complete a white form and would furnish copies of documents called "discharges" which he would receive at the end of a voyage. (Tr. 103). This information was then verified by the N.M.U. staff from records maintained at the union headquarters for the Pension and Welfare Fund to which all commercial ship employers were required to contribute according to a formula based on the amount of each union member's seatime. (Tr. 102, 103).

When a seaman claimed M.S.T.S. service as part of the requisite 800 days' seatime for Group 1 status, he would list his ships and days at sea on a green form. (GX 8; Tr. 124). The union could not verify the claim internally because the Government was not required to contribute to the Pension and Welfare Fund. (Tr. 140). Accordingly, all records of service on M.S.T.S. ships were maintained at the M.S.T.S. headquarters in Brooklyn. The green forms were taken there by the union to be verified by a personnel officer at M.S.T.S. Once verified, the form would be accepted as evidence of the requisite number of M.S.T.S. days, and the Group 1 book and card would be issued in due course. (Tr. 141).

The fee charged by the union when a seaman qualified for Group 1 status was a $150.00 initiation fee and the normal $30.00 quarterly dues. These fees normally were paid at the time the union book and blue card were issued. (Tr. 94, 129).

2. The Defendants.

The defendant Alleyne Robinson was employed by the N.M.U. during 1968-1970 as a Patrolman. He was an elected official of the union who acted as liason between the seamen aboard the vessels in port, and the union offices ashore. (Tr. 89, 90). His duties included boarding vessels to handle grievances and to inform the seamen of union policies and benefits. Robinson also maintained an office in the union hall on Seventh Avenue in New York City where he assisted seamen in completing applications for Group 1 membership in the union. His specific area of responsibility was for M.S.T.S. ships, as he had been a government seaman for several years before being employed by the N.M.U. (Tr. 597, 598). Accordingly, he handled the initial processing of applications for Group 1 status by seamen who claimed among their credentials service aboard M.S.T.S. vessels. In that capacity Robinson carried the green forms to M.S.T.S. headquarters for verification and returned them to the union after signature by a personnel officer. (Tr. 125, 126). The forms were then processed by the union in reliance on the verified information.

The defendant Villegas also was a Patrolman, but was not assigned to handle the M.S.T.S. ships. (Tr. 132, 133) Jose Antonio Acosta Alvarez was employed by the union as a Master-at-Arms, whose duties included keeping order in the union hall and checking identification at the doors. (Tr. 133).

3. The Scheme and its Object: Conversion of the M.S.T.S. Applications and Group 1 Classification Documents.

At trial the Government called nine seamen who testified that during 1969 they had applied through the defendant Robinson for Group 1 status for which they were not qualified. Israel Capote and John Ragsdale were intro-

duced to Robinson by the defendant Villegas, who charged them each $750 in order to get the Group 1 book (Tr. 172, 179, 256, 259, 260). Hernan Cancela, Juan Bachiller and Wilfredo Gandia were introduced to Robinson by the defendant Alvarez, who quoted each of them a figure of $600.00 for a Group 1 book (Tr. 320, 321, 455, 456, 511). Bachiller and Gandia paid Alvarez the requested sum (Tr. 321, 511);* Cancela paid Alvarez only $500 because he had no more money (Tr. 455). The other seamen, Miguel Rosado, Weldon Oliver, Julian Orbe and Raul Quinones dealt with Robinson either alone or through an unidentified co-conspirator.

Eight of the seamen testified that although they knew they were not qualified for Group 1, they went to Robinson to make an application.** Robinson had them sign the application forms and took copies of their discharges from commercial ships (Tr. 171, 175, 261, 266, 322, 352, 353, 429, 431, 458, 461, 482, 512). Julian Orbe, who was an M.S.T.S. seaman but not qualified for Group 1 because the ships on which he had served were not N.M.U. vessels, gave Robinson his M.S.T.S. record card and signed a blank green form. He gave the signed applications to Robinson devoid of information as to seatime, and Robinson filled in the blanks (Tr. 401, 410).

As noted above, five of the seamen paid fees to Villegas or Alvarez prior to the meeting with Robinson. The others paid various sums to Robinson or unknown co-conspirators at the time the applications were signed (Tr. 358, 407, 429, 485). All of the amounts paid were in excess of the $150

---

* Although Gandia identified Alvarez at trial as the man who had introduced him to Robinson, Alvarez was not charged in connection with that introduction (Count Seven).

** Julian Orbe was not qualified for Group 1 because his M.S.T.S. service was not on N.M.U. ships. The other seamen lacked the sufficient 800 days' seatime.

fee authorized by the union.* In addition, some of the seamen were required to pay the $150 initiation fee and/or the $30 quarterly dues (Tr. 188, 325). Others apparently had that amount taken from the money paid to either Alvarez, Villegas or Robinson, because in either event, the seamen obtained receipts from Robinson for the $150.00 sometime after the applications had been signed. (Tr. 187, 271, 325, 357, 431, 460, 486, 514; GX 22-31). The fraudulently obtained receipts were then used to obtain the Group 1 identification books and cards and to obtain berths on ships as union-member Group 1 seamen. (Tr. 272, 327, 361, 408, 432, 516).

At trial six of the seamen identified the green M.S.T.S. forms they had completed in blank. (Tr. 181, 262, 323, 359, 403, 482, GX 10, 12, 14, 15, 17, 18). Capote Oliver, Bachiller, Ragsdale and Quinones all testified that the information entered on the reverse of the forms indicating names of ships and date of service was false (Tr. 182, 265, 325, 360, 487). They testified in addition that the information had not been on the forms when they had been returned to Robinson, nor had they given him that information. (Tr. 183, 266, 323, 360, 487). Gandia, Cancela and Rosado testified that they also had signed blank forms similar to Government's Exhibit 8, a sample M.S.T.S. form, and that they had not sailed on any M.S.T.S. ships, nor had they informed Robinsion of any such service. (Tr. 430, 431, 458, 461, 513, 514).** Julian Orbe identified the form he had signed, and indicated that the information was correct, but that the M.S.T.S. ships on which he had sailed had been in the Pacific. (Tr. 406). Thus they had been represented by the Seafarer's International Union, not the N.M.U. (Tr. 602).

---

* Amounts paid, ranged from $500 (Cancela) to $850 (Rosado, Orbe, Quinones).

** The original forms for Gandia, Cancela and Rosado could not be located in the union files (Tr. 437, 458, 532). The statement in the brief of appellant Alvarez that "the government attorney admits that he did not have the signed applications of any of the witnesses' simply is not true (Br. 7).

All of the false forms admitted into evidence at trial bore the signature "E.U. Maynard" in the space for verification by the personnel office at M.S.T.S. headquarters in Brooklyn (GX 10, 12, 14, 15, 17, 18).

4. Robinson's Attempted Coverup.

Weldon Oliver testified that after he had been notified by the union that his book would be revoked, he contacted Mr. Robinson and asked for a refund of the money he had paid, a total of $700 (Tr. 363). Robinson replied that he would have to collect the money and that the money did not go through him. (Tr. 363). Later, when Oliver was notified to report to the F.B.I., he asked Robinson what to do (Tr. 365). Robinson told Oliver that it would be all right to see the F.B.I., but that Oliver should only tell the F.B.I. that he had paid the $150.00 initiation fee to obtain his Group 1 book, and not to say anything about the additional $550 for which he had not obtained a receipt (Tr. 365). Nonetheless, Oliver reported to Special Agent Kelly and told him about both payments. (Tr. 366).

The Defense Case.

1. Robinson.

Alleyne Robinson testified that he had indeed entered the information on the back of the green forms in evidence, and that as part of his duties as a Patrolman he had taken the forms to Brooklyn for verification. (Tr. 561, 651-622). He denied having received money in excess of the authorized fees for processing false information on the forms. (Tr. 623, 627). He testified that the signature "E.U. Maynard" which appeared on all of the forms was that of Mrs. Maynard, a clerk in the Industrial Relations Office at M.S.T.S. where records were checked to verify the seatime of men claiming M.S.T.S. service. (Tr. 613)

Robinson denied that he had been in league with Villegas or Alvarez to sell Group 1 books (Tr. 665) and denied that he had acted in concert with Mrs. Maynard to have her verify non-existent seatime on the green forms. (Tr. 623). Robinson admitted, however, that once the green forms had been returned from Brooklyn to the union, they were not checked further, but were relied upon, based on the verification, as giving an accurate accounting of the M.S.T.S. time. (Tr. 605). Otherwise, the form would be returned to the union as "rejected" and no card would be issued. (Tr. 604). Robinson also admitted that although he had been going to M.S.T.S. headquarters with the forms for many years, and knew that there were *two* clerks wtih whom the forms could be left for verification, all of the false forms in evidence had been verified by Mrs. Maynard. (Tr. 613). Again, he denied any agreement with Mrs. Maynard for her services in that regard. (Tr. 623).

2. Alvarez.

Jose Antonio Acosta Alvarez testified that he had been employed as a Master-at-Arms at the Union during 1968 and 1969. He denied ever having introduced Cancela, Bachiller or Gandia to Robinson, and denied ever having taken money from them. (Tr. 673, 674). He testified that he had nothing to do with the issuance of Group 1 books, and would refer all inquiries he received in that regard to one of the patrolmen. (Tr. 685).

3. Villegas.

The defendant Villegas offered no evidence.

The Government's Rebuttal Case.

Bienvenido Bracero testified as a rebuttal witness that in 1968 he had been referred to Robinson by Alvarez in order to obtain a Group 1 book. (Tr. 699, 700). He testified that Robinson charged him $800 in order to apply for Group

1, for which he did not qualify (Tr. 701). Bracero identified the green M.S.T.S. form he had signed in blank (GX 32), and testified that the information concerning the ships was false and that he had written it at Robinson's direction (Tr. 704). This form also bears the verification by E.U. Maynard. (GX 32).

Bracero testified that about two weeks after he paid Robinson he received a Group 1 book, which he used to obtain employment for about eight months (Tr. 709). After his book was revoked by the union in 1970, Bracero was approached by Robinson, who said, "Listen, I sold you a book," to which Bracero responded, "Yes, and it was taken away." "Be quiet," said Robinson, "and I will refund your money . . . ". Later, Robinson threatened Bracero by reminding him that the East River was very big. (Tr. 732).

Robinson's Surrebuttal.

Following Bracero's testimony, Robinson again took the stand and denied that he had accepted unauthorized fees from Bracero (Tr. 743) or that he had threatened Bracero (Tr. 744). He claimed that Bracero's testimony as well as that of the other seamen had been false. (Tr. 748).

ARGUMENT

POINT I

Title 29, United States Code, Section 501(c), prohibits the acts which the defendants committed.

The appellants challenge the applicability of Title 29, United States Code, Section 501(c) to the facts of this case, urging that the statute does not criminally proscribe the corrupt conduct proved at trial. The Government submits that considered in light of the legislative history of the Labor-Management Reporting and Disclosure Act of 1959

(Landrum-Griffin Act), and decisions interpreting the scope of Section 501(c) and similar statutes, the defendants' conduct in this case falls well within the bounds of the statute.

A. The Scope of Section 501(c).

One of the announced purposes of the Landrum-Griffin Act was to eliminate the abuse of union authority by those charged with responsibility for the operation of the union and the management of its affairs. Title 29, United States Code, Section 401. Reflecting its concern that union officials conduct their activities in a manner consistent with the union's best interests, Congress in Section 501(a) provided that union officials occupy a fiduciary position with respect to the union, its members, its funds and its property. Section 501(a) also prohibits self-dealing and conflicts of interest by union officials.*

---

* § 501. Fiduciary responsibility of officers of labor organizations.

(a) Duties of officers; exculpatory provisions and resolutions void.

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the Constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

Section 501(b) provides a civil remedy for aggrieved union members against union officials who breach the duties imposed by Section 501(a). In addition, Congress in Section 501(c) provided for criminal sanctions against union officials or employees who embezzled or converted union funds, property or other assets to their personal use or the use of others. It is the application of this statute which is in issue in this case:

> "Any person who embezzles, steals or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more that $10,000 or imprisoned for not more than five years, or both."

The Government agrees with the appellants that Section 501(c) was aimed in large measure at union officials involved in the hypothecation of union funds, or the diversion of such funds to their own pleasures. Indeed, "embezzlement of union funds" is one of the ways in which the fiduciary duty in Section 501(a) may be breached. *See* H. Rep. No. 741, (86th Cong., 1st Sess., July 30, 1959), at 9. The reported cases and literature also reflect that the typical prosecution brought under Section 501(c) involves embezzlement or conversion of union funds. *See, e.g., United States* v. *Ottley,* Dkt. No. 74-1731 (2d Cir., January 7, 1975); *United States* v. *Sullivan,* 498 F.2d 146 (1st Cir., 1974); *United States* v. *Vitale,* 489 F.2d 1367 (6th Cir. 1974); *United States* v. *Goad,* 490 F.2d 1158 (8th Cir.), *cert. denied,* 417 U.S. 945 (1974); *United States* v. *Silverman,* 430 F.2d 106 (2d Cir. 1970), *cert. denied,* 402 U.S. 953 (1971); *United States* v. *Dibrizzi,* 393 F.2d 642 (2d Cir. 1968); *Colella* v. *United States,* 360 F.2d 792 (1st Cir.), *cert. denied,* 385 U.S. 829 (1966); *Guarnaccia* v. *Kenin,* 234 F. Supp. 429,

442 (S.D.N.Y.), *aff'd sub nom Gurton* v. *Arons,* 339 F.2d 371 (2d Cir. 1964).

However, nothing in the legislative history nor in the extant case law *requires* that Section 501(c) be limited solely to a proscription against embezzlement of money or funds, as appellants argue. Rather, Section 501(c) is part of a statute which defines "in the broadest terms possible the duty which the new federal law imposes upon a union official." *Highway Truck Drivers and Helpers Local 107* v. *Cohen,* 182 F. Supp. 608, 617 (E.D. Pa.), *aff'd* 284 F.2d 162 (3d Cir. 1960), *cert. denied,* 365 U.S. 833 (1966). In *Johnson* v. *Nelson,* 325 F.2d 646 (8th Cir. 1963), a civil action under Section 501(b) by union members against the union president and treasurer, the Court of Appeals concluded:

> "Careful analysis of Title V refutes the notion that the statute is narrow in its terms and scope and that it is limited solely to pecuniary responsibilities or improper use of union funds.
>
> * * * * *
>
> "Thus it plainly appears that the statute is broad in its reach. Officers and other union representatives may not act adversely to their organization or to the members as a group, or acquire a personal interest which is contrary to the interests of the organization. Being trustees the officers must subvert their own personal interests to the lawful mandates and orders of the organization.
>
> "The legislative history of the Act demonstrates that Congress intends that it should not be interpreted by the courts narrowly or strictly, but, to the contrary, that its confines are broad." *Id.,* at 649, 650.

This interpretation of the "broad confines" of Section 501 is not limited to civil actions. In *United States* v. *Silverman,* 430 F.2d 106 (2d Cir. 1970), *cert. denied,* 402 U.S.

953 (1971), a criminal case involving misapplication of union funds, it was said:

> "The fiduciary role that labor officials must occupy is defined in Section 501(a) to include a duty to hold the union's property solely for the benefit of the union and to expend it only in accordance with its constitution, by-laws and resolutions." *Id.*, 430 F.2d at 114.

The statute, we submit, should not be narrowly construed to apply only to union financial matters, because Section 501(c) "was designed essentially to protect general union memberships from the corruption, however novel, of union officials and employees. . ." *United States* v. *Sullivan,* 498 F.2d 146, 150 (1st Cir. 1974). Here, the misuse of union documents for personal gain was a particularly iniquitous form of corruption against which the general union membership was entitled to be protected. Section 501(c) is the statutory safeguard which accomplishes that end and is applicable to this kind of conduct as well as to the classic factual pattern of embezzlement of union funds. Moreover, as Judge Friendly noted in the majority opinion in *United States* v. *Silverman, supra,* 430 F.2d at 126, Section 501(c) employs language similar to that used in many other "larceny-type" offenses proscribed in the United States Code:

> "These statutes have gone beyond the common law offense of larceny and the old statutory crime of embezzlement because 'gaps or crevices have separated particular crimes of this general class and guilty men have escaped through the breaches.' *Morissette* v. *United States,* 342 U.S. 246, 271-272 . . . (1952). But, as was there held, despite minor variations in language the common thread is that the defendant, at some stage of the game, has taken another person's

> property or caused it to be taken, knowing that the other person would not have wanted that to be done. [citation omitted.]"

The *Silverman* rationale is applicable here. The defendant Robinson, a union official, aided on occasion by Alvarez, Villegas and others, converted to his own use union property in the form of applications for priority status, which came into his possession for the purpose of processing. He made false entries on the documents and charged unauthorized exhorbitant fees to those making the applications. His conversion of the documents occurred when he entered the false information, accepted the unauthorized fees from the applicants and then caused the union to issue Group I classification documents in reliance on the false forms. This clearly is one of the types of conversion recognized by the Supreme Court in *Morrissette* v. *United States*, 342 U.S. 246, 271-272 (1952):

> "Conversion may include misuse or abuse of property. It may reach use in an unauthorized manner or to an unauthorized extent of property placed in one's custody for limited use."

There can be no question that such corrupt activities constitute crimes under Section 501(c). *United States* v. *Silverman, supra.**

---

* Counsel for appellant Villegas suggests that the defendants herein were prosecuted under the wrong section of the statute and that a bribery prosecution under Section 302(b) of the Taft-Hartley Act would have been appropriate. However, that statute, Title 29, United States Code, Section 186, applies only to illegal payments by employers to union officials.

B. "Property" as used in Section 501(c) includes the documents converted in this case.

The indictment alleged in Counts Two through Eleven (and the Court charged the jury, Tr. 890), that the object of the conversion in this case was "National Maritime Union Group I applications and classification documents." Both the green MSTS applications (*e.g.*, GX 8) and the books and plates which were the classification documents (GX 5, 6, 20, 21), were the property of the National Maritime Union. Obviously, the means by which the classification documents were issued to the unqualified seamen was the use of the applications which the defendant Robinson knowingly falsified. Accordingly, he converted both categories of documents.

Appellants argue that these documents are not the type of "property" which may be the object of an embezzlement or conversion under Section 501(c). However, there are several cogent reasons why such union documents should be considered "property" under the statute. First, under the plain terms of the statute, it cannot be denied that Robinson "converted" to his own use and that of the unqualified seamen, union "property" *i.e.*, documents belonging to the union by which he was employed. *Donegan* v. *United States*, 287 F. 641, 646 (2d Cir. 1922), *cert. denied*, 260 U.S. 751 (1923); *United States* v. *Keller*, 168 F. 697 (9th Cir. 1909); *Lotto* v. *United States*, 157 F.2d 623, 629 (8th Cir. 1946), *cert. denied*, 330 U.S. 811 (1947). Second, consideration must be given to the overriding policy in statutory construction that the Court should,

> ". . . find that interpretation which can most fairly be said to be embedded in the statute in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested." *N.L.R.B.* v. *Lion Oil Co.*, 352 U.S. 282, 297 (1957) (concurring opinion of Frankfurter J.).

Thus, the *entire* text and concept of the statute, Section 501, must be considered. *See Schwartz* v. *Romnes*, 495 F.2d 844, 849 (2d Cir. 1974). Considering the criminal sanctions of Section 501(c) in light of the fiduciary provisions of Section 501(a), there can be no doubt that including the documents converted by appellants within the scope of Section 501(c) is consistent with and furthers the "clearly beneficent" purpose, *United States* v. *Ottley, supra*, slip op. at 1189, which Congress sought to achieve in enacting the legislation. Significantly, although Villegas argues that the acts are not criminal, he admits that they are violative of the fiduciary responsibilities set forth in Section 501(a) (Br. at 25). That construction of the statute belies the obvious: by using the terms "conversion . . . of union property," Congress intended to apply the criminal law not only to embezzlement of funds, but also to other violations of the fiduciary obligations of union officials. *United States* v. *Silverman, supra*, 430 F.2d at 126-27.

Robinson's breach of his fiduciary duties was clearly criminal. He converted applications to his own use, received more than $7,500 for doing so, and knowingly caused the Group I classification documents to be converted by fraud to the use of men who were not authorized to have them. Application of the criminal law to such activities gives effect to the Congressional purpose behind the enactment of Title V of the Landrum-Griffin Act. Likewise, to regard the documents in question as union "property" is to recognize the value and importance of the documents in procuring the highest position a seaman could attain, and the coveted corollary right of first choice and permanent employment. Conversion of Group I documents constituted appropriation of the very means by which a seaman would obtain his job.

As the District Court below held:

> "Taking into account the remedial purposes of the Labor-Management Reporting and Disclosure Act and

> the Supreme Court's definition of conversion in *Morrissette* v. *United States, supra,* the Court finds that the use of the union Group I application forms to sell Group I classifications to unqualified seamen constitutes "conversion" of those forms within the meaning of Section 501(c). ("Mem. Op. Joint App. "E", at 5).

Under the circumstances of this case, Judge Bonsal's analysis is entirely correct, and his ruling should be affirmed.

C. The documents converted were property having a "value".

Appellants also urge that the documents converted here were without an established value and therefore could not have been the object of the crime of conversion or embezzlement. The contention is without merit, since, here, as in *Donegan* v. *United States,* 287 F. 641, 646 (2d Cir. 1922), *cert. denied,* 260 U.S. 751 (1923), "[t]he statute does not make the offense depend upon value." "The words of the statute permit a charge to be made for the taking of any personal property no matter what may be its value." *Id.* While in this case the documents themselves do not possess substantial intrinsic value, even their nominal value is sufficient to warrant the conclusion that they are "property" of a labor organization within the meaning of the statute, *Id.; United States* v. *Keller,* 168 F. 697 (7th Cir. 1909); *Lotto* v. *United States,* 157 F.2d 623, 629 (8th Cir. 1946), *cert. denied,* 330 U.S. 811 (1947). Falsified and fraudulently verified, however, the application forms represented a very real and substantial right to lucrative employment. *Cf. Clark* v. *United States,* 268 F. 329, 331 (6th Cir. 1920). On this score, the record indisputably establishes that the documents had a significant market value, since the evidence shows that seamen were willing to pay from $500 to $850 for the use of the falsified application forms and the even-

tual issuance of the Group I classification documents. *United States* v. *Tyers*, 487 F.2d 838, 831 (2d Cir. 1973), *cert. denied*, 416 U.S. 971 (1974); *United States* v. *Kramer*, 289 F.2d 909, 920-21 (2d Cir. 1961); *accord*, *United States* v. *Ciongoli*, 358 F.2d 439, 441 (3rd Cir. 1966); *United States* v. *Devall*, 462 F.2d 137, 143 n. 16 (5th Cir. 1972); *United States* v. *Bullock*, 451 F.2d 884, 890 (5th Cir. 1971); *United States* v. *Ditata*, 469 F.2d 1270, 1273 (7th Cir. 1972); *Montgomery* v. *United States*, 403 F.2d 605, 610 (8th Cir. 1968), *cert. denied*, 396 U.S. 859 (1969); *Churder* v. *United States*, 387 F.2d 825, 832-33 (8th Cir. 1968).

POINT II

The evidence is sufficient to sustain the guilty verdict as to all defendants.

Jose Antonio Acosta Alvarez was convicted of conspiracy and two counts of aiding and abetting Robinson's violation of 29 U.S.C. § 501(c) (Counts One, Two and Three). Joseph M. Villegas was also convicted of conspiracy and two aiding and abetting counts (Counts One, Four and Five). They now challenge the sufficiency of the evidence as to both conspiracy and the substantive counts. (Alvarez Br. at 23-28; Villegas Br. at 26).

The testimony of the Government's witnesses clearly established that on three occasions seamen were introduced to Robinson by Alvarez for the purpose of obtaining Group I books to which Alvarez knew they were not entitled. (Tr. 320, 321, 455, 456, 511). On the two occasions charged as substantive counts (Counts 2 and 3), Alvarez actually received the money from Hernan Cancela and Juan Bachiller. Subsequently Bachiller received a receipt from Robinson for part of the money he had paid to Alvarez (Tr. 325). Both of the men received their Group I cards from the union, an event which could have occurred only if the $150

initiation fee had been paid (Tr. 327, 460). Both Bachiller and Cancela gave Robinson the $150 only after they had paid Alvarez $500. (Tr. 325, 460).

The evidence against Villegas is similar. Israel Capote and John Ragsdale testified that Villegas introduced them to Robinson for the purpose of buying Group I books (Tr. 177, 260). Each paid Villegas $750, and each later obtained a receipt from Robinson for $150 before acquiring Group I documents (Tr. 184, 187, 260, 269). Indeed, when Capote tried to pay Robinson the $750, Robinson indicated that the money should be paid to Villegas (Tr. 179). Moreover, when Capote asked for a receipt, he was told only that he would have to "trust" Villegas (Tr. 184).

The record amply sustains the jury's finding that Robinson converted to his own use the green MSTS application forms which resulted ultimately in conversion by unauthorized issuance of Group I books. He was responsible for processing the forms, he had all of the seamen sign them in blank, and he admittedly entered all of the false information on them. Likewise, it was Robinson who took the forms to Brooklyn, and it was he who had each of them verified falsely by Edith Maynard.

In order to obtain customers for his "service," Robinson used men like Alvarez and Villegas, who, the proof showed, had an arrangement whereby they accepted the unauthorized fees for him and directed interested unqualified seamen to him. The method used by both Villegas and Alvarez was the same, with each taking money from the "customer" en route to or from Robinson's fifth floor office. (Tr. 184, 260, 321, 456).

It is likewise clear from the record that Alvarez and Villegas knew that the scheme involved falsification of documents. Each man instructed the seamen to bring their com-

mercial "discharges", and each was present on occasions when Robinson had the seaman complete forms in blank, including the crucial green MSTS forms. Any claim that they were ignorant of nature of the falsification simply will not bear weight. The evidence of aiding and abetting here is manifest. *Nye & Nissen* v. *United States,* 336 U.S. 613, 619 (1949).

The same evidence supports the defendants' convictions for conspiracy. The overt acts were the same as the substantive aiding and abetting counts. The proof at trial showed a pattern of conduct and dealing among the defendants which unambiguously established the existence of the conspiracy charged in the indictment. *United States* v. *Iannelli,* 461 F.2d 483, 486-87 (2d Cir.), *cert. denied,* 409 U.S. 980 (1972); *United States* v. *Projansky,* 465 F.2d 123, 135 (2d Cir.), *cert. denied,* 409 U.S. 1006 (1972); *United States* v. *Cassino,* 467 F.2d 610, 617-18 (2d Cir. 1972), *cert. denied,* 410 U.S. 928 (197[illegible]; *see United States* v. *Papadakis,* Dkt. No. 74-1847 (2d Cir., January 10, 1975), slip op. 1231.

Accordingly the evidence is more than sufficient to sustain the verdict here.

POINT III

None of the other claims have merit.

A. Pre-indictment delay.

Robinson argues on appeal, as he did prior to trial, that the indictment should have been dismissed due to "undue and prejudicial delay." (Robinson Br. at 13). The record shows that the F.B.I. investigation in this case began in 1970 and that the indictment was filed on April 29, 1974, within the five-year statute of limitations.

This Court, consistent with the views of the Supreme Court in *United States* v. *Ewell*, 383 U.S. 116 (1966), has held that the statute of limitations is the primary guarantee against the prosecution of stale criminal charges. Accordingly, if the prosecution is begun within the period of limitations, as it was in this case, the defendant must demonstrate that the delay has so impaired his ability to prepare his defense as to amount to a denial of his right to a speedy trial or a denial of due process. *United States* v. *Marion*, 404 U.S. 307 (1971); *United States* v. *Mallah*, 503 F.2d 971, 989 (2d Cir. 1974); *United States* v. *Capaldo*, 402 F.2d 821 (2d Cir. 1968), *cert. denied*, 389 U.S. 1044 (1969). There has been no such showing here.

Prior to trial Judge Bonsal denied the defendants' motions to dismiss due to pre-indictment delay, finding that there had been no showing of prejudice to the defendants. (Mem. Op. August 28, 1974) (Joint App. "E") The motion was renewed and denied again after the Government's case (Tr. 536, 540). That ruling should not be disturbed on appeal in the continued absence of any showing of prejudice.

B. Accomplice testimony instruction.

Although Robinson claims otherwise (Br. at 14), the record reflects that Judge Bonsal instructed the jury that the Government's seamen-witnesses might have known they engaged in illegal activity, and that therefore their testimony should be subjected to "careful study and scrutiny". (Tr. 902, 903). That is the essence of the accomplice testimony instruction. *See United States* v. *Marks*, 368 F.2d 566 (2d Cir. 1966), *cert. denied*, 386 U.S. 933 (1967). Accordingly, Robinson's assignment of error in this regard is without merit because the judge gave a suitable accomplice testimony instruction tailored to the circumstances of this case.

CONCLUSION

The judgments of conviction should be affirmed.

Respectfully submitted,

PAUL J. CURRAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

T. BARRY KINGHAM,
LAWRENCE S. FELD,
Assistant United States Attorneys,
Of Counsel.

★ U. S. Government Printing Office 1975— 614—211—462

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

T. BARRY KINGHAM, being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 13th day of February, 1974 he served 2 copies each of the within brief by placing the same in a properly postpaid franked envelope addressed:

SAMUEL M. ZUCKERMAN, ESQ.
570 SEVENTH AVENUE
NEW YORK, NY 10009

MANUEL TAXEL, ESQ.
1540 BROADWAY
NEW YORK, NY 10036

PHYLIS SKLOOT BAMBERGER, ESQ.
FEDERAL DEFENDER SERVICES UNIT
509 U.S. COURTHOUSE
FOLEY SQ.
NEW YORK, NY 10007

And deponent further says that he sealed the said envelope and placed the same in the mail drop for mailing at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

T. Barry Kingham

Sworn to before me this

13th day of February 1974

Jeanette Ann Grayeb

JEANETTE ANN GRAYEB
Notary Public, State of New York
No. 24-1541575
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1975